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IN THE

Supreme Court of the United States

October Term, 1925.

No. 91.

THE UNITED STATES, *Appellant*,

vs.

ST. LOUIS, SAN FRANCISCO & TEXAS RAILWAY COMPANY.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE APPELLEE.

ALEX. BRITTON,
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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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THE OPINION OF THE COURT OF CLAIMS.

With the findings of fact the Court of Claims filed simply a memorandum as follows:

> "See cases of *Schaff, Receiver*, No. A-241, decided March 3, 1924, and *Wabash Railway Company*, No. C-74, decided March 3, 1924." (R. 6.)

The opinions in the cases referred to are reported in 59 Ct. Cls. 318, 322.

GROUNDS OF JURISDICTION.

The judgment of the Court of Claims was entered March 17, 1924, and the Government's motion for a new trial was overruled April 7, 1924. The appeal was allowed June 2, 1924, on motion of the Assistant Attorney General, under sections 242 and 243 of the Judicial Code. (R. 6, 7.)

STATEMENT OF THE CASE.

In August, 1917, the railway company (the appellee) carried twenty-seven carloads of "military impedimenta" for the United States, on Government bill of lading, from Ft. Sill, Oklahoma, to Camp Bowie, Texas. In due time it presented its bill for $2,452.29 on the basis of freight rates. The bill was disallowed by the Auditor for the War Department, September 16, 1918, because of a ruling of the Comptroller of the Treasury to the effect that the Government was entitled to the carriage of one carload of military impedimenta free for every twenty-five soldiers carried as passengers, under certain provisions of the passenger tariffs. (R. 5.)

In suits brought by other companies the Court of Claims held that the Comptroller's ruling was wrong. *Missouri Pacific Railroad Co. v. United States*, 56 Ct. Cls. 341, decided June 13, 1921. See also the opinion of this court in *St. L. B. & M. Ry. Co. v. United States*, 268 U. S. 169, 173.

Thereupon the railway company filed its petition in the Court of Claims, on March 8, 1923, claiming $2,452.29 on account of the service rendered. (R. 1.)

The Court of Claims found that the amount to which the railway company was entitled, on the basis of freight rates less land-grant deductions, was $2,234.97, and entered judgment for that amount. (R. 6.)

THE QUESTION ON APPEAL.

The railway company's petition was filed in the Court of Claims on March 8, 1923. The service was rendered in

August, 1917. Obviously the petition was filed within the six years allowed under Section 156 of the Judicial Code. The sole question for decision is whether the amendment of section 16, paragraph (3) of the Interstate Commerce Act, by the Transportation Act of February 28, 1920, ch. 91, 41 Stats. 456, and the act of June 7, 1924, ch. 325, 43 Stats. 633, as follows:

> "All actions at law by carriers subject to this Act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after."

barred the railway company's claim because (1) the petition had not been filed within three years from the date the service was rendered, or because (2) it had not been filed within three years from the date of the amendment, February 28, 1920.

THE ARGUMENT.

SUMMARY.

I. Section 16, paragraph (3), as amended, does not apply *at all* to claims presented to the Court of Claims, *first*, because it was clearly not intended, and, *second*, because the amendment by its terms does not apply to such claims.

II. The amendment is prospective in its effect and does not apply to causes of action or claims in existence at the date of its enactment.

I.

THE RAILWAY COMPANY'S CLAIM IS NOT AFFECTED IN ANY WAY BY THE AMENDMENT OF SECTION 16, PARAGRAPH (3), BECAUSE THE SECTION DOES NOT APPLY AT ALL TO CLAIMS PRESENTED TO THE COURT OF CLAIMS. IT DOES NOT AMEND OR HAVE THE EFFECT OF AMENDING SECTION 156 OF THE JUDICIAL CODE WHICH ALLOWS SIX YEARS FOR PRESENTING CLAIMS TO THE COURT OF CLAIMS. IT WAS CLEARLY NOT THE INTENTION OF THE LEGISLATORS TO DO SO, AND THE WORDS USED DO NOT HAVE THAT EFFECT.

From the act as a whole (either the Interstate Commerce Act as amended, or the Transportation Act considered separately) the intention of section 16 (3) is fairly indicated to limit the collection of charges *under the act* from shippers *subject to the act*.

That the intention of Congress is to be determined from a consideration of the act as a whole and the purposes to be served is obvious.

> *E. I. Dupont de Nemours & Co. v. Davis*, 264 U. S. 456.

(1) The amendment of section 16, paragraph (3) is contained in Title IV of the Transportation Act, 1920. The

act consists of five titles. As this court said in *Dupont v. Davis,* 264 U. S. 460, while these titles are concerned with related subjects, they are entirely distinct one from another. Title IV consists entirely of amendments to the interstate Commerce Act. The evident purpose of Title IV was to perfect the Interstate Commerce Act, to adjust differences between the carriers and the shipping public, to remedy defects and inequities revealed by the practical operation of the law. It is impossible to find any purpose to deal with the relations between the carriers and the Government. On the contrary, in amending section 3 of the act to require collection of charges before delivery or relinquishment of possession, Congress was careful to add a proviso that this should not be construed to prevent the extension of credit to the Government.

The intention to exclude the Government as a shipper from the operation of the Interstate Commerce Act is evident from section 22, and section 3, paragraph (2) as amended by the Transportation Act. Section 22 reads:

> "That nothing in this Act shall prevent the carriage, storage or handling of property free or at reduced rates for the United States, State, or municipal governments."

And section 3, paragraph (2), as amended by the Transportation Act:

> "(2) From and after July 1, 1920, no carrier by railroad subject to the provisions of this Act shall deliver or relinquish possession at destination of any freight transported by it until all tariff rates and charges thereon have been paid, except under such rules and regulations as the Commission may from time to time prescribe to assure prompt payment of all such rates and charges and to prevent unjust discrimination; *Provided,* That the provisions of this paragraph shall not be construed to prohibit any carrier from extending credit in connection with rates and charges on freight transported for the United States,

for any department, bureau, or agency thereof, or for any State or Territory or political subdivision thereof, or for the District of Columbia."

The proviso was added because of the long established practice of handling transportation accounts between the Government and the railroad companies. It is well known that the railroads perform service for the Government, on bills of lading and transportation requests, without requiring prepayment of the charges for transportation. The forms of bills of lading and transportation requests are prescribed by the Comptroller of the Treasury (now the Comptroller General) and approved by the Secretary of the Treasury, and after accomplishment are used to support the carrier's bills when presented for payment. 14 Comptroller's Decisions 967.

(2) It is a fair construction to read section 16 (3) with section 3 (2) as amended, the intention obviously being to prevent unjust discrimination and to require prompt payment. By section 16 (3) it was provided that the three years' period within which actions at law for recovery of charges shall be brought, begins to run "upon delivery or tender of delivery" of the shipment. This is to be read with section 3 (2), which provides that from and after July 1, 1920, no carrier by railroad, subject to the provisions of this Act, shall deliver or relinquish possession at destination of any freight transported by it until all tariff rates and charges thereon have been paid, except under such rules and regulations as the Commission may from time to time prescribe to assure prompt payment and to prevent unjust discrimination. The purpose of these sections is plainly to prevent unjust discrimination and to that end to require prompt payment of charges.

By the express terms of the Act, however, the carriers *may* discriminate in favor of the United States (section 22) and may extend credit to the United States, section 3 (2) as amended, and judicial notice will be taken of the

fact that all such transportation is performed on credit. It is a fair reading of the Act to infer that it was *not* intended to require collection of charges from the United States within three years, as from other shippers, especially as such a conclusion means a repeal by implication of section 156 of the Judicial Code. The Government availing itself of this privilege of transportation on credit, necessarily reads itself outside of those provisions of the Act dealing with cash payments and prompt settlements.

(3) The conclusion is helped by consideration of the nature of claims presented to the Court of Claims and the jurisdiction of the Court of Claims.

Certainly an action or suit in that court is not an action at law for transportation charges *fixed under the Interstate Commerce Act,* because the Government is expressly exempt, under section 22, from the operation of the Act in so far as the collection of tariff charges is concerned. A suit by a carrier in the Court of Claims for money claimed to be due for the transportation of freight or passengers is a suit on an express contract, evidenced by the government bill of lading or transportation request, or else a suit on implied contract under section 145 of the Judicial Code. The carrier has performed service for which it is entitled to be paid and its claim rests on contract. It is not a claim for statutory charges fixed by law, as when such charges are collected from a private shipper. *Pittsburgh etc. Railway Co. v. Fink,* 250 U. S. 577; *New York Central Railroad Co. v. York & Whitney Co.* 256. U. S. 406.

Ordinarily a carrier suing the Government in the Court of Claims presents its claim on the basis of tariff rates less land-grant deductions, on the theory that there is an implied agreement to pay such rates in the absence of an express agreement to pay more or less. In fact, however, claims may be and sometimes are presented for more or less than tariff rates, as, for example, when a special service is rendered not covered by the tariffs, or when there is an express agreement on the part of the Government to

pay more or on the part of the carrier to accept less than tariff rates.

Bush, Receiver v. United States, 52 Ct. Cls. 199.
Yazoo & Mississippi Valley R. R. Co. v. United States, 54 Ct. Cls. 165.
Los Angeles & Salt Lake R. R. Co. v. United States, 55 Ct. Cls. 305.
Atchison, Topeka and Santa Fe Ry. Co. v. United States, 59 Ct. Cls. 275.

(4) Section 16, paragraph (3), does not apply, by its terms, to claims in the Court of Claims.

It provides that all "*actions at law*," etc., shall be begun within three years from the time the cause of action accrues, and not after.

A claim presented to the Court of Claims is not an "action at law." The act establishing and defining the jurisdiction of the Court of Claims, as now incorporated in section 145 of the Judicial Code, provides that the Court of Claims "shall have jurisdiction to hear and determine the following matters:

> "all *claims* * * * in respect to which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable."

So also it is provided by section 156 of the Judicial Code:

> "Sec. 156. "Every *claim* against the United States cognizable by the Court of Claims, shall be forever barred unless the *petition* setting forth a statement thereof is filed in the court, or transmitted to it by the Secretary of the Senate or the Clerk of the House of Representatives, as provided by law, within six years after the *claim* first accrues."

It may be said, therefore, that a claim pending in the Court of Claims on petition of a claimant is hardly an "action at law" to enforce a legal right, but is more in the nature of a proceeding authorized by statute to establish by proof a claim against the Government to be reported to Congress for appropriation, *which is exactly the procedure in every case.* The appropriation, while usually made as a matter of course, may nevertheless be withheld, and in some cases has been withheld, as in many of the French Spoliation cases.

(5) The Government cites and relies on *Fort Pitt Gas Co.* v. *United States,* 49 Ct. Cls. 224; *Kahn* v. *United States,* 55 Ct. Cls. 271; and *Christie-Street Commission Co.* v. *United States,* 136 Fed. 326. In those cases it was held that suits against the United States to recover taxes illegally exacted are governed by section 3227 of the Revised Statutes which provides for a limitation of two years for all such suits, and not by section 156 of the Judicial Code which applies generally to suits in the Court of Claims.

First, it is to be observed by comparing the language of the statutes that there is a difference between the statute considered in those cases and the statute under consideration here. R. S. 3227 provides:

> "No suit or proceeding for the recovery of an internal tax alleged to have been erroneously or illegally assessed or collected * * * shall be maintained in any court unless the same is brought within two years next after the cause of action accrued."

Section 156, Judicial Code, provides:

> "Every claim against the United States cognizable by the Court of Claims, shall be forever barred unless the petition setting forth a statement thereof is filed in the court, or transmitted to it by the Secretary of the Senate or the Clerk of the House of Representatives, as provided by law, within six years after the claim first accrues."

It is apparent, as the courts held in the cases cited, that there is no necessary inconsistency between the two statutes and that it was clearly the intention of Congress to treat tax cases as a special class of cases, a policy which was in effect before the enactment of the Tucker act in 1887. R. S. 3227 stood by itself and could be given effect only by applying it to all cases covered by its terms.

But in the present case we have under consideration a statute which is an amendment of one paragraph of one section of the Interstate Commerce Act. It may be given effect, as we think was intended by Congress, by limiting it to its natural operation as a part of the Interstate Commerce Act, without applying it to claims against the Government and without disturbing the jurisdiction of the Court of Claims or the operation of Section 156 of the Judicial Code in any manner.

Second. It is also to be noted that Section 3227 of the Revised Statutes was enacted and was law *before* the Tucker Act was passed in 1887 (the act of March 3, 1887, ch. 359, 24 Stats. 505), containing the six years limitation now incorporated in Section 156 of the Judicial Code. The court in its opinion in *Christie-Street Commission Co.* v. *United States, supra,* called attention to this fact, 136 Fed. 332. When the Tucker Act was passed in 1887 there was and had been for many years a code of laws which prescribed the rights of citizens in the adjustment of claims for excessive payment of taxes, including the limitation contained in R. S. 3227. The Tucker Act of 1887 was a general law applying to many classes of claims, and was not inconsistent with the *then existing* statute which prescribed a limitation applicable to a particular class.

In the present case, however, we have a general law which has been in force since 1887, and against it we have the statute under consideration, an amendment to the Interstate Commerce Act, which, it is argued, by implication limits the application of the general law. The cases are quite different, and the same argument, that repeals are

not to be implied, which helped the decision in *Christie-Street Commission Co.* v. *United States* and *Fort Pitt Gas Co.* v. *United States,* is effective and supports our argument in the present case, namely, that the operation of section 156, Judicial Code, is not affected by the act of February 28, 1920.

We return then to our first proposition that section 16 (3) does not apply at all to claims presented to the Court of Claims by railroad companies who have not been paid for transportation service furnished the government, because

(1) It is clear, from consideration of the Transportation Act alone or the Interstate Commerce Act as a whole, that the Government as a shipper is excluded generally from the operation of the act, as evidenced by section 22 and section 3, paragraph (2);

(2) Section 16, paragraph (3), and section 3, paragraph (2), read together, show that the purpose of those two sections as amended by the Transportation Act was to prevent unjust discrimination and to that end to require prompt payment of charges;

(3) The nature of such claims and the jurisdiction of the Court of Claims negative the idea that it was intended by Congress to apply the statute to such cases;

(4) Section 16, paragraph (3) does not apply, by its terms, to such claims.

II.

SECTION 16, PARAGRAPH (3) AS AMENDED BY THE ACT OF FEBRUARY 28, 1920, IN ANY EVENT DOES NOT APPLY TO CAUSES OF ACTION OR CLAIMS WHICH HAD ALREADY ACCRUED.

If the amendment is to be given effect as to claims in the Court of Claims, assuming for the argument that we are

mistaken in supposing that it was not intended and does not apply at all to such claims, then we submit that in accordance with the well known rules of statutory construction it must be given prospective and not retroactive effect. Given such effect it applies to all causes of action or claims arising after its enactment and on such causes of action suit must be instituted within three years from accrual of the cause of action. But as to causes of action or claims *in existence on February 28, 1920,* such as the claim in the present case, the amendment does not apply. Such claims are not barred by limitation except in case of failure to file the petition in the Court of Claims within the six years allowed by section 156 of the Judicial Code.

The general rule is that statutes, other than curative and remedial statutes, are always to be construed prospectively unless it is distinctly expressed or clearly and necessarily implied that the statute is to have a retroactive effect, and that the words of the statute are not to be given a retrospective meaning unless they are so clear, strong and imperative that no other meaning can be annexed to them or unless the intention of the legislature cannot be otherwise satisfied.

United States v. Heth, 3 Cranch 399.
Twenty Percent Cases, 20 Wall. 179.
U. S. Fidelity Co. vs. Struthers Wells Co., 209 U. S. 306.
Winfree v. Northern Pacific Railway Co., 227 U. S. 296.
Union Pacific Railroad Co. v. Laramie Stock Yards Co., 231 U. S. 190.
Shwab v. Doyle, 258 U. S. 529.
Fullerton-Krueger Lumber Co. v. Northern Pacific Railway Co., 266 U. S. 435.
25 Ruling Case Law 785-793, secs. 34-39.

The cases cited are some of the cases in this court in which the general rule has been stated and applied. The language used in the opinions is clear and positive.

"Words in a statute ought not to have a retrospective operation, unless they are so clear, strong, and imperative, that no other meaning can be annexed to them, or unless the intention of the legislature cannot be otherwise satisfied. This rule ought especially to be adhered to, when such a construction will alter the preexisting situation of parties, or will affect or interfere with their antecedent rights, services, and remuneration; which is so obviously improper, that nothing ought to uphold and vindicate the interpretation, but the unequivocal and inflexible import of the terms, and the manifest intention of the legislature." *United States v. Heth,* 3 Cranch 399, 413.

"Even though the words of the statute are broad enough in their literal extent to comprehend existing cases, they must yet be construed as applicable only to cases that may hereafter arise, unless the language employed expresses a contrary intention in unequivocal terms." *Twenty Percent Cases,* 20 Wall. 187.

"There are certain principles which have been adhered to with great strictness by the courts in relation to the construction of statutes as to whether they are or are not retroactive in their effect. The presumption is very strong that a statute was not meant to act retrospectively, and it ought never to receive such a construction if it is susceptible of any other. It ought not to receive such a construction unless the words used are so clear, strong and imperative that no other meaning can be annexed to them or unless the intention of the legislature cannot be otherwise satisfied." *U. S. Fidelity Co. v. Struthers Wells Co.,* 209 U. S. 314.

"The rule has been expressed in varying degrees of strength but always of one import, that a retrospective operation will not be given to a statute which interferes with antecedent rights or by which human action is regulated, unless such be 'the unequivocal and inflexible import of the terms, and the manifest intention of the legislature.'" *Union Pacific Railroad Co. v. Laramie Stock Yards Co.,* 231 U. S. 199.

Fullerton-Kruger Lumber Co. v. Northern Pacific Railway Co., 266 U. S. 435, decided at the last term, is a case in which it was sought to give retroactive effect to another

section of the Transportation Act, 1920, namely, section 206, paragraph (f) which provides:

> "The period of Federal control shall not be computed as a part of the periods of limitation in actions against carriers or in claims for reparation to the Commission for causes of action arising prior to Federal control."

The plaintiff sued the railway company for excess freight charges collected. The defense was the local statute of limitations under which the plaintiff's claim had been barred some time during Federal control. The plaintiff contended that section 206, paragraph (f) of the Transportation Act had the effect of reviving causes of action when the period designated by the State statute for bringing them had expired during Federal control and asserted that the mischief to be remedied indicated such purpose and the ordinary meaning of the words employed disclosed it. But this court, applying the rule that all statutes are to be considered prospective "unless the language is express to the contrary, or there is a necessary implication to that effect" held that the statute should not be applied to causes barred by limitation before its passage.

The general rule applies to statutes of limitation as well as to other statutes.

> *Sohn v. Waterson*, 17 Wall. 596.
> *Murray v. Gibson*, 15 How. 421.
> *Bonfils v. Public Utilities Com.* 67 Colo. 563, 189 Pac. 775.
> *Ludwig v. Stewart*, 32 Mich. 27.
> *Robertson v. Wheeler*, 162 Ill. 566, 44 N. E. 870.
> 25 Ruling Case Law, 792-793; 17 Ruling Case Law, 682-684.

As the court held in *Ludwig v. Stewart*, 32 Mich. 27, if a statute of limitations is to apply to past transactions it must fix with certainty the time within which the action

must be brought, and *in the absence of such provision* such cases are governed *by the statute in force at the time of the transaction.*

Counsel for the Government contend that the general rule of construction that statutes are to be considered prospective is inapplicable to the present case and assert that courts have never hesitated to give a retrospective effect to statutes of limitation when the time remaining to the plaintiff within which to bring a suit is reasonable, relying upon cases in which various periods of time were held to be reasonable. In such cases, however, it invariably appeared that it was the *intention* of the legislature to have the act apply to causes of action which had already accrued, and the question was whether the time allowed for bringing suit on such causes of action was, on the one hand, reasonable, or, on the other hand, so short that the act would be invalid on constitutional grounds. That is true of the cases cited in the Government's brief on page 17, except *Button v. A. T. & S. F. Ry. Co.,* which will be referred to hereinafter.

The argument for the Government is that *in the present case* giving the statute retroactive effect the plaintiff would have had three years from the accrual of its cause of action (August, 1917) which would have meant until August 1920, thus there would have been a period of about six months from the date of the Act within which the plaintiff might have filed its suit. The argument, if valid at all, applies to all cases. In other cases three years from the accrual of the cause of action might have already elapsed when the act was passed on February 28, 1920. *That is exactly true* of the case of *United States v. Southern Railway Company* which is now pending in this Court, No. 501 at this term, on appeal from the Court of Claims, decided by the Court of Claims on February 21, 1925. An examination of the record in that case will disclose that the cause of action accrued in November 1916. If the act of February 28, 1920, were given retroactive effect, as contended by the Government, it would destroy the plaintiff's cause of action

without allowing any time for filing suit. The *Southern* case illustrates the fallacy of the argument. The act cannot be held retroactive and applied to one case without applying it to all cases, which would obviously result in destroying some causes of action without allowing any time whatever for filing suit, as in the *Southern* case.

The case of *Button v. Atchison, Topeka and Santa Fe Railway Co.* 1 Fed. (2d) 709, is not persuasive when the opinion of the court is examined in the light of the facts of the case. The railway company sued for an undercharge after having quoted the charges in advance and received payment. At the time the shipment was made there was no federal statute of limitations (the shipment was before the enactment of the Transportation Act, 1920) and actions by railroad companies for recovery of transportation charges were governed by the State statutes of limitation. The statute of Oklahoma allowed three years. On February 28, 1920, the railway company's cause of action had been subject to the local statute for two years and four months. The Transportation Act, 1920, amended section 16, paragraph (3) of the Interstate Commerce Act and provided that all actions at law by carriers for recovery of their charges shall be begun within three years from the time the cause of action accrues, thus enacting for the first time a federal statute of limitations for such actions. The railway company contended that under the amendment it was entitled to the three years fixed by the federal statute *from February 28, 1920, in addition to the time which had already run under the local statute.* Its suit was actually filed more than three years from the accrual of its cause of action and was already barred under the local statute. The curious thing about the case is that the court instead of holding that the federal statute was not retroactive and leaving the claim to be governed by the local statute under which it was already barred, held that the federal statute should be given retroactive effect from the accrual of the plaintiff's cause of action, so as to bar the claim, just as it was already barred

under the local statute. It may be observed also that the court was careful to say that the case might be different if the State statute provided a longer period of limitation (as for example, in this case the general Court of Claims statute allowing six years) or if the plaintiff's right under the former law were impared or destroyed by applying the federal statute and giving it a retroactive effect. See the last paragraph of the opinion, 1 Fed. (2d) 712.

(2) The amendment of June 7, 1924.

The act of June 7, 1924, ch. 325, 43 Stats. 633, reenacted section 16, paragraph (3), with slight changes immaterial so far as the question here under consideration is concerned, adding, however, subdivision (h) as follows:

> "(h) The provisions of this paragraph (3) shall extend to and embrace cases in which the cause of action has heretofore accrued as well as cases in which the cause of action may hereafter accrue, * * *"

Counsel for the Government concede that if the act of June 7, 1924, is to be treated as effecting a change in the law, and not as a declaration of the intention of the 1920 act, it would be unconstitutional with respect to private shippers in some cases. See pages 25 and 27 of their brief. For that reason they argue that the act of 1924 must be accepted as declaratory of the purpose of the earlier act, so that the rule in *Sohn v. Waterson*, 17 Wall., 596, may be applied, thus barring a claim not filed within three years *from the date of the act of 1920*, as the claim in this case.

We point out simply that there is nothing in the act of 1924 which expressly makes the act of 1920 retroactive or bars any suit *which had been filed prior to the act of 1924*. The act of 1924 provides:

> "(3) (a) All actions at law by carriers subject to this Act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after. * * *

> "(h) The provisions of this paragraph (3) shall extend to and embrace cases in which the cause of action has heretofore accrued as well as cases in which the cause of action may hereafter accrue, * * *"

The language is clear—that all actions *shall be* barred within three years and that the limitation shall be applicable to causes of action which have already accrued, but there is not one word which suggests that any suit which has *already been filed* is to be barred. On the other hand, the words *"shall be begun"* indicate clearly that the statute applies to *actions brought* after its passage although on causes of action which had accrued prior thereto. As this Court said in *United States vs. Sugar Refining* Co., 202 U. S. 563, 578-579:

> "Future time and past time are directly opposite, and by no inadvertence or intention can we believe or suppose that Congress, having in mind and purpose the distinction between the past and the future, should use language that expressed the one while it meant to provide for the other."

We also point out that the legislative history of the act of June 7, 1924, shows clearly that the purpose of the act was not to bar any causes of action, but on the contrary was to *revive* those causes of action which had already accrued in favor of shippers for the recovery of straight overcharges, and which had become barred by the interpretation of the 1920 act by this Court in *Kansas City Southern Railway Co. v. Wolf*, 261 U. S. 133. The reports of the committees of the House and Senate give fully the reasons for the passage of the act of 1924, and negative any possibility that it was passed for any such purpose as is contended for by the Government in this case. The report of the Senate Committee on Interstate Commerce is printed at pp. 5072-5073, Vol. 65, Congressional Record. We have printed as an appendix to this brief the report of the House Committee, pp. 21-22, *post*. The bill was passed without debate

or discussion other than the explanation made by the chairman of the committee. See Vol. 65, pp. 5061, 5072-5073.

(3) The rule, or rather the modification of the general rule, in *Sohn v. Waterson,* 17 Wall. 596, is not applicable to the present case.

In *Sohn v. Waterson* the facts were that Sohn had obtained a judgment against Waterson in Ohio in 1854. Shortly thereafter Waterson moved to Kansas and became a citizen of that State. February 19, 1859, the legislature of Kansas passed a statute which enacted that on certain causes of action, including foreign judgments, action "shall be commenced within two years next after the cause or right of such action shall have accrued, and not after." In 1870 Sohn filed his suit in the courts of Kansas on the Ohio judgment. The question for decision was whether the statute of limitations, enacted after Waterson had become a resident of Kansas and after Sohn's cause of action against him in that State had accrued, applied at all to such a cause of action. It was contended by the plaintiff that the statute did not apply at all *and that there was no limitation on his right to sue* (there being no statute of limitation prior to the act of 1859). This court, applying the general rules of construction that statutes are always to be considered prospective and that any construction which would render an act unconstitutional is to be avoided, held that the act of the Kansas legislature should be construed as effective from the date of its passage, *and so construed should apply to causes of action which had already accrued, i. e.,* on such causes of action suit might be filed within two years from that date. The reason for applying the statute at all to causes of action which had already accrued at the date of the passage of the act was that *otherwise such causes of action would have been left "without any limitation at all (which, it is presumed, could not have been intended)."* See the opinion of Mr. Justice Bradley, 17 Wall. 599.

Thus the rule as applied in *Sohn v. Waterson* was a modi-

fication of the general rule necessary because the statute under consideration was a new statute not taking the place of a prior statute and because if the rule were not so modified and applied to causes of action which had already accrued at the date of the passage of the act, such causes of action would be left without any limitation at all, which, as Justice Bradley said, presumably could not have been intended.

In the present case, however, there is no such reason or necessity, because if, as we contend, the amendment of February 28, 1920, does not apply to causes of action which had already accrued, *they remain subject to the limitation of six years provided in section 156 of the Judicial Code.*

CONCLUSION.

The judgment of the Court of Claims should be affirmed, either because (1) section 16 (3) of the Interstate Commerce Act, as amended, does not apply at all to claims in the Court of Claims, or because (2) it is to be construed as prospective and not applicable to claims or causes of action which had already accrued.

Respectfully submitted,

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APPENDIX.

REPORT.

[To accompany S. 2704.]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 2704) to amend paragraph (3), section 16, of the interstate commerce act, having considered the same, report thereon with a recommendation that it pass.

Its provisions are the same as those in H. R. 8285 (introduced by Mr. Newton of Minnesota), and it embodies ideas somewhat similar to those contained in H. R. 6058 (introduced by Mr. Newton of Minnesota) and H. R. 5720 (introduced by Mr. Ayres of Kansas).

Paragraph 3 of section 16 of the interstate commerce act, as amended, pertains to limiting of the right to bring causes of actions by the carriers against shippers and by shippers against the carriers. All actions at law by carriers for recovery of their charges shall be begun within three years after the cause of action accrues. The shipper under existing law has two years in which to bring his action for the recovery of damages from the carrier. The shipper can proceed by two methods: He can complain to the Interstate Commerce Commission or he can bring suit for damages. In claims for reparation he makes complaint to the Commission; and generally, in claims for straight overcharges, he brings a court action in the first instance to recover the amount due him for a charge which is in excess of the published tariff.

The existing law is very clear that the limitation as to proceedings on complaints before the Commission for the recovery of damages is two years. It has been almost universally the practice of both carriers and shippers to regard the statute of limitations of the State, where the cause of action accrues, as controlling in the bringing of actions in court for the recovery of straight overcharges.

About one year ago in the case of the *Kansas City Southern Railway Co. v. Wolf, et al.* (261 U. S. 133), the Supreme Court of the United States held in an action at law to recover straight overcharges that the statute of limitations against the shipper was two years. This was a great surprise to all the shippers and most of the carriers. The result was that a large number of claims were barred by the

statute as so construed in this decision. The court also held, approving prior decision in Grand Trunk Western Railway Co. (236 U. S. 662, 667), that the running of the statute of limitations barred not only the remedy, but also the liability; and that the carrier was bound to claim the benefit of the statute.

Congress adjourned shortly after the decision was rendered. The above measures were introduced for the purpose of changing the law and of correcting the injustice ensuing by the barring of these many claims.

Under its provisions the carriers still have the benefit of the three-year limitation in the bringing of actions to recover their charges. Shippers are still governed by a two-year limitation for the recovery of damages not based on overcharges.

For the recovery of overcharges in action at law, shippers are given three years from the time the cause of action accrues. Provision is made for an extension, providing claim for the overcharge is presented in writing to the carrier within the three-year period. In this event the period of limitation is extendd to include six months from the time notice is given by the carrier to the shipper of disallowance of the claim. In other words, the claimant will then have six months in which to make up his mind whether to bring suit or not.

The last paragraph (a), revives the claims that were barred under existing law, following its interpretation in the Wolf case. The revival period extends to within six months following the going into effect of the provisions of this bill.

The bill has the approval of the Interstate Commerce Commission, as will appear by the letter attached and which is made a part of this report.